IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

SECOND APPEAL NO. 38 OF 2002

Shri Umakant Narayan Sinai
Borcar, Government Primary
Teacher, of 59 age, resident
of Quarter no.23, IInd floor,
Type II, Goa Medical College
Quarters, Bambolim, Goa. ... Appellant.

versus

1. State of Goa,
   through Chief Secretary,
   Secretariat Building,
   Panaji, Goa.

2. The Director of Education,
   Government of Goa,
   Directorate of Education
   Building, Panaji, Goa. ... Respondents.

Mr.M. S. Joshi, Advocate for the Appellant.

Mr. A.N.S.Nadkarni, Advocate General with Mr. H.D.Naik, Additional Government Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 21ST NOVEMBER, 2002.

ORAL ORDER

This Second Appeal arises against the Judgment and Decree passed by the IInd Additional District Judge, North Goa, Panaji, dated 31st October, 2001, in Regular Civil Appeal No.67/99, by which the learned lower appellate Court reversed the Judgment and Decree passed by the learned Civil Judge, Senior

Division, Bicholim, dated 15th January, 1999, in Regular Civil Suit No.77/1997/A. The present Second Appeal has been filed by the Plaintiff whose suit was decreed by the learned Trial Court but dismissed by the learned lower appellate Court.

2. I have heard Mr. M. S. Joshi, the learned Counsel appearing for the Appellant and Mr. A. N. S. Nadkarni, the learned Advocate General with Mr. H. D. Naik, the learned Additional Government Advocate for the Respondents.

3. With the assistance of the learned Advocates for the parties, I have gone through the Judgments of the two Courts below as well as the evidence of the parties.

4. The Appellant/Plaintiff had filed the suit as the Respondents/Defendants had declined to effect a correction in the date of birth of the Appellant/Plaintiff. The Appellant/Plaintiff was appointed as a Government Primary Teacher on 21st January, 1964 and had orally given his date of birth as 12th June, 1939. An entry was accordingly made in the Service Book of the Appellant/Plaintiff regarding his date of birth as 12th June, 1939. The Appellant/Plaintiff by an application dated 28th April,

1995, requested the Respondents to change his date of birth in the service records. Exh.P.W.1/A, the S.S.C. Certificate shows the date of birth of the Appellant/Plaintiff as 15th February, 1944. During the trial, the Appellant/Plaintiff also produced on record Exh.P.W.1/B, a Birth Certificate which shows his date of birth as 8th February, 1943.

5. The learned Trial Court accepted the Certificate produced by the Appellant/Plaintiff and came to the conclusion that the date of birth of the Appellant/Plaintiff was 8th February, 1943. The learned Trial Court was influenced by the fact that the Respondents/Defendants had asked the Appellant/Plaintiff to produce the S.S.C. Certificate as well as the Certificate of Birth. The learned Trial Court also found that Fundamental Rule 56-M had not been brought to the notice of the Appellant/Plaintiff and, therefore, the said Fundamental Rule could not be applied to the case of the Appellant/Plaintiff. The learned Trial Court also held that the suit of the Plaintiff was within limitation. The learned Trial Court, therefore, partly decreed the suit of the Appellant/Plaintiff declaring that the correct date of the birth of the Appellant/Plaintiff was 8th February, 1943 and directed the Respondents/Defendants to correct the said date in the service records.

6. The Respondents/Defendants being aggrieved by the Judgment and Decree of the learned Trial Court filed Regular Civil Appeal No.67/99 before the IInd Additional District Judge, North Goa, Panaji. The learned lower appellate Court after appreciating the pleadings, documents and the evidence recorded a finding that the application of the Appellant/Plaintiff, in view of Note 6 to Fundamental Rule 56-M was clearly barred by time and the Respondents/Defendants were merely asking the Appellant/Plaintiff to produce his S.S.C. Certificate which cannot be said to have shown willingness to correct the date of birth. The lower appellate Court relying on Rule 56-M Note 6 came to the conclusion that the Appellant/Plaintiff ought to sought the correction of the date of birth within five years and having failed to do so, the suit suffered from latches and dismissed the suit.

7. In the present Appeal, the learned Counsel appearing for the Appellant has raised the following substantial questions of law:-

SUBSTANTIAL QUESTIONS OF LAW

> "Whether or not the appellant was entitled for correction of date of birth in the service book as per the Secondary School Passing Certificate which shows date of birth as 08.02.1943 in view of the fact that he had brought on record in his deposition that he had

> no occasion to see the date of birth recorded in his service book even though he had signed it at different times and it was only for the first time in April 1995 that he came to know that the date of birth recorded in his service book was 12.06.1939 and immediately in the year 1995 applied for correction of record in the service books within 5 years in terms of note 6 of F.R.56."

8. The above point which is urged in the present Second Appeal cannot be termed as Substantial Questions of Law. It is purely a question of fact which has been answered by the Courts below. Even otherwise, it was the Appellant/Plaintiff who had given his date of birth as 12th June, 1939 and, therefore, the fact whether the Appellant/Plaintiff had no occasion to see the date of birth recorded in his Service Book pales into insignificance. The Appellant/Plaintiff was aware about the date of birth stated by him at the time of employment. According to me, the present Second Appeal is devoid of any merit. It does not raise questions of law much less a substantial question of law. There is no perversity in the reasoning of the lower appellate Court calling for any interference in Second Appeal.

9. In the result, therefore, Second Appeal is dismissed in limine with no order as to costs.

P. V. HARDAS, J.